

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
ANTHONY GERMAN	:	NO. 13-11-1

MEMORANDUM

Bartle, J.

May 9, 2013

The government has indicted Anthony German ("German") and John Quach ("Quach") on one count of possession with intent to distribute, and aiding and abetting the possession with intent to distribute, 100 grams or more of heroin, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. Before the court is the motion of defendant German to suppress physical evidence. German contends that the stop of his vehicle and his subsequent detention and search violated his rights under the Fourth Amendment. The court held an evidentiary hearing on the motion to suppress on April 26, 2013 and makes the following findings of fact and conclusions of law.

I.

On April 17, 2012, Officer Charles Myers ("Officer Myers"), a Philadelphia police officer assigned to a task force with the FBI, was present with Harley Perez ("Perez"), a fugitive who had been arrested that day after he was found in his apartment with 1000 grams of heroin, \$15,000, and a handgun. Perez was originally arrested in January 2012 for possession with

intent to distribute heroin. At that time, he cooperated with Officer Myers, and his information led to the arrest and conviction of another individual for possession with intent to distribute heroin. Perez subsequently fled.

Perez agreed to cooperate with Officer Myers once again on April 17, 2012. Perez offered to call "Bico," a Dominican male from whom he had previously purchased heroin in bulk, and seek to purchase a kilogram of heroin. It was later determined that Bico's given name was Estarlin Hidalgo-Perez ("Hidalgo-Perez"). Perez called Hidalgo-Perez, and they spoke in Spanish. The call occurred while Perez was under Officer Myers' supervision and in the presence and within the hearing of several officers, including Officer Soto, a Spanish-speaking officer. Perez requested a kilogram of heroin. Hidalgo-Perez replied that he only had approximately 600 to 650 grams of heroin and asked if that was sufficient. Perez looked to the officers, who nodded, and then told Hidalgo-Perez that it was sufficient. Arrangements were then made between Hidalgo-Perez and Perez to meet on the 4900 block of Penn Street in the Frankford neighborhood of Philadelphia to complete the transaction.

That night, Perez rode in a police car with Officer Myers and Officer Soto to the 4900 block of Penn Street. While they were in the police car, Hidalgo-Perez called Perez on his cell phone. Hidalgo-Perez advised Perez that he was sending "Anthony," to complete the transaction. Perez had had previous interactions with Anthony. Perez informed Officer Myers that

Anthony was the brother-in-law of Hidalgo-Perez and that he had previously seen him driving a red minivan.

While Perez, Officer Myers, and Officer Soto were in the police car stopped on the 4900 block of Penn Street, Officer Myers observed a red minivan approach. Perez identified the vehicle as the red minivan he had seen Anthony drive in their past interactions. When it was approximately thirty feet away, Perez said that the driver of the vehicle, whom he could see through the windshield, was Anthony, the brother-in-law of Hidalgo-Perez. This individual was later determined to be defendant German. Defendant Quach was in the passenger seat. Officer Myers began to follow the red minivan and also radioed other officers in the area to stop the vehicle. The red minivan was thereafter "boxed in" by police vehicles. German stopped his vehicle and reversed it into the police car behind him. After a struggle, German was removed from the vehicle and placed into custody.

Officer Myers looked into the vehicle through the open door and noticed a McDonald's paper bag with a rip down the side. Officer Myers saw two clear plastic bags within the McDonald's bag which contained a brown powder substance that he knew from his experience as a Philadelphia police officer to be bulk heroin. Officer Myers reached into the vehicle and removed the McDonald's bag and its contents. Later testing confirmed that the plastic bags within the McDonald's bag contained 640 grams of heroin. Officer Myers also seized two cell phones from the floor

of the minivan and approximately \$2,100 from German. The minivan was determined to be owned by another individual and was parked and secured at the scene.

## II.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend IV. "[A] warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed." Devenpeck v. Alford, 543 U.S. 146, 152 (2004) (citations omitted). Warrantless searches of vehicles are permitted if there is probable cause to believe a vehicle contains evidence of criminal activity. Arizona v. Gant, 556 U.S. 332, 346 (2009); United States v. Ross, 456 U.S. 798, 820-21 (1982). Under these circumstances, officers may search any area of the vehicle where the evidence might be found. Id.

Probable cause "is a fluid concept -- turning on the assessment of probabilities in particular factual context -- not readily, or even usually, reduced to a neat set of legal rules." Paff v. Kaltenbach, 204 F.3d 425, 436 (3d Cir. 2000) (quoting Illinois v. Gates, 462 U.S. 213, 232 (1983)). "While probable cause ... requires more than mere suspicion, the law recognizes that probable cause determinations have to be made 'on the spot' under pressure and do 'not require the fine resolution of conflicting evidence that a reasonable doubt or even a

preponderance standard demands.'" Id. (quoting Gerstein v. Pugh, 420 U.S. 103, 121 (1975)). We follow a "common sense approach" and determine the existence of probable cause based on "the totality of the circumstances." Id. (citations and quotations omitted). This entails assessing the "knowledge and information which the officers possessed at the time of arrest, coupled with the factual occurrences immediately precipitating the arrest" in determining if probable cause existed." United States v. Stubbs, 281 F.3d 109, 122 (3d Cir. 2002) (quoting United States v. Harris, 482 F.2d 1115, 1117 (3d Cir. 1973)).

Under all the circumstances, there was probable cause to stop and search the red minivan and to arrest German. Officer Myers and an officer who spoke Spanish had listened to telephone calls between Harley Perez and Estarlin Hidalgo-Perez about a drug delivery of 600 to 650 grams of heroin that German was going to carry out on behalf of Hidalgo-Perez. Hidalgo-Perez had told Perez that his brother-in-law, Anthony, would deliver the heroin to the 4900 block of Penn Street, and Perez knew German and his vehicle from prior interactions. Perez then identified German and the vehicle at the agreed upon location. It was reasonable for Officer Myers to rely on the statements of Perez, who had previously been a reliable informant.

The defendant relies on United States v. Kithcart, 134 F.3d 529 (3d Cir. 1998), but that case is inapposite. There, an officer assigned to a radio patrol car in Bensalem Township, Pennsylvania received three radio transmissions reporting armed

robberies in and near Bensalem Township perpetrated by "two black males in a black sports car." Id. at 530. The officer stopped and searched a black sports car with two black males in it based solely on this description, and our Court of Appeals found the evidence plainly insufficient to meet the probable cause standard. Id. at 531.

In contrast, in the matter before us, Perez was present to identify both the minivan and German. Furthermore, in Kithcart, the court noted that probable cause was not established by either the location or time of the stop, whereas here the minivan and German were identified at the agreed upon location and the time of the planned drug delivery.

The government has proven by a preponderance of the evidence that it had probable cause to seize the evidence in issue. United States v. Ramos, 443 F.3d 304, 307 n.2 (3d Cir. 2006). Accordingly, we will deny the motion of defendant German to suppress physical evidence.

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ORDER

AND NOW, this 9th day of May, 2013, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendant Anthony German to suppress physical evidence (Doc. #27) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.